

Maddin Hauser's
Employment Law
Symposium

**RETIREMENT PLANS THAT ARE
RIGHT FOR YOUR BUSINESS**

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Overview

- The type of retirement plans available for your workforce
- Socially Responsible Investing (SRI), Environmental, Social, and Governance (ESG), Pooled Employer Plans (PEPs), and State-Mandated Retirement Programs
- What happens when things go wrong?

401(K) AT A GLANCE

- 730,000 plans in the U.S. covering ~70M active participants and \$10T in assets
- Employees contribute a portion of wages to individual accounts
- Elective deferrals excluded from taxable income (except Roth deferrals)

401K



ROTH 401(K) FEATURES

- After-tax contributions; tax-free qualified withdrawals in retirement
- No income limits (unlike Roth IRAs)
- SECURE 2.0: RMDs no longer required for Roth 401(k)s
- Plans may now permit Roth employer matching/nonelective contributions (SECURE 2.0 § 604)
- In-plan Roth conversions available if plan document permits

SAFE HARBOR 401(K)

Safe Harbor Designs

Design	Employer Contribution
3% Nonelective	3% of comp to all eligible employees
Basic Match	100% on first 3% + 50% on next 2% (4% total if EE defers 5%)
Enhanced Match	Formula \geq basic match (e.g., 100% on first 4%)
QACA	Auto-enrollment + 2-yr cliff vesting; 100% on first 1% + 50% on next 5%

- Generally exempt from ADP/ACP testing and top-heavy testing



AUTOMATIC ENROLLMENT (QACA & SECURE 2.0)

Automatic Contribution Arrangements

- QACA: default deferral starts at 3%–10%, escalates 1% annually to at least 6%
- SECURE 2.0: most new 401(k)/403(b) plans (est. after 12/29/2022) must auto-enroll starting 2025
- Default rate: 3%–10%, escalating to at least 10% (max 15%)
- Exemptions: plans pre-dating 12/29/2022, businesses ≤ 10 EEs, businesses < 3 yrs old, church and governmental plans

DEFINED BENEFIT & CASH BALANCE PLANS

Defined Benefit Plans

- Traditional pension:
- Guaranteed monthly income based on salary history and years of service
- Employer bears all investment risk
- Cash balance plan:
- DB plan that looks like a DC plan — individual hypothetical account balances with guaranteed pay credits + interest credits
- Higher cost and complexity, but powerful for accelerating retirement savings

COMBO PLANS & CROSS-TESTING

Combining DC + DB Plans

- Cross-testing (new comparability): different contribution % by participant, but projected to produce equivalent benefits at retirement
- Must satisfy minimum contribution requirements for NHCEs (5% allocation or 1/3 of highest HCE rate)

Participant	Age	Comp	Total Contribution
Owner	50	\$360,000	\$252,984
NHCE #1	37	\$52,300	\$5,544
NHCE #2	29	\$18,800	\$1,993
NHCE #3	34	\$28,600	\$3,032

- 96% of total contributions directed to the owner

2026 DOLLAR LIMITATIONS

Key Limits for 2026

Limit	Amount
401(k) elective deferral (§402(g))	\$24,500
Annual additions — DC plans (§415(c))	\$72,000 or 100% of comp
Compensation cap (§401(a)(17))	\$360,000
Deductible employer contribution (§404(a)(3))	25% of aggregate participant comp
Catch-up (ages 50–59 & 64+)	\$8,000
Catch-up (ages 60–63)	\$11,250

- High earners (wages > \$150K): catch-up must be Roth, effective for tax years after 12/31/2025

LOANS & IN-SERVICE DISTRIBUTIONS

Accessing Plan Funds

Loans:

- Must be evidenced by enforceable agreement; max term 5 years (exception for principal residence)
- Level amortization, quarterly payments minimum, reasonable interest rate
- Max: lesser of \$50,000 or 50% of vested benefit (min \$10,000 available)

In-Service Distributions:

- Pre-tax 401(k) contributions distributable only on specific events (separation, death, disability, age 59½, hardship)
- Distributions before 59½ may trigger 10% penalty

COMMON PROBLEM AREAS

Where Things Go Wrong

- Late or missed contribution deposits — DOL requires "as soon as administratively feasible"
- Top-heavy violations: failure to provide minimum contributions to non-key employees
- Loan compliance: repayment beyond 5 years, missed quarterly payments, missing plan language
- Inadequate hardship/emergency documentation
- Failing to follow the terms of the plan document

CORRECTING MISTAKES (EPCRS)

We Made a Mistake — Now What?

Program	How It Works
Self-Correction (SCP)	Correct insignificant operational failures at any time, no fee; SECURE 2.0 § 305 expanded to most inadvertent failures
Voluntary Correction (VCP)	File with IRS before audit, pay limited fee, receive IRS approval
Audit CAP	Failure identified on audit; correct and pay sanction proportional to severity

STATE-MANDATED RETIREMENT PROGRAMS

The State Mandate Landscape

- 17 states have active mandatory programs as of early 2026; 20+ have enacted legislation
- Designed for employees without access to employer-sponsored plans
- Michigan: HB 5336 introduced in late 2025 — "Michigan Secure Retirement Savings Program"
- Would require employers with 5+ employees (no existing plan) to auto-enroll employees into a state-administered IRA

SOCIALLY RESPONSIBLE INVESTING

SRI & ESG in Retirement Plans

- SRI: financial returns + positive ESG outcomes; excludes industries like tobacco and weapons
- Impact investing: proactive subset — renewable energy, affordable housing
- DOL 2022 ESG rule: ERISA fiduciaries may consider ESG factors when relevant to risk-return analysis
- ERISA fiduciary duties remain paramount: prudence, loyalty, diversification, adherence to plan documents



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QUESTIONS



**Submit questions
for presenters**



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THANK YOU



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